



Judicial Council of California

Administrative Office of the Courts

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March 23, 2009

Hon. Bill Lockyer
State Treasurer
915 Capitol Mall, Suite 110
Sacramento, California 95814

Mr. Michael C. Genest
Director of Finance
State Capitol, Room 1145
Sacramento, California 95814

Re: Determination of Sufficiency of Federal Stimulus Funds (AB3X 16)

Dear Treasurer Lockyer and Mr. Genest:

As part of the budget passed on February 19, 2009, you have been charged to make a finding under Government Code section 99030 that will significantly affect the state's trial courts. As you are aware, AB3X 16 requires you to "meet and confer" on or before April 1, 2009, for the "purpose of determining whether federal legislation has been enacted that will make available, by June 30, 2010, additional federal funds that may be used to offset not less than ten billion dollars (\$10,000,000,000) in General Fund expenditures." If you find that the \$10 billion target has been met, then nearly \$1 billion in program cuts and a 1.25 percent income tax surcharge will not go into effect (Gov. Code, § 99030(c)).

Should you conclude that the federal revenue does not reach the \$10 billion trigger mark, among the program cuts that will go into effect is a \$100 million reduction to the operating budget of the state's trial courts. Additionally, a \$71 million allocation for funding for the second previously authorized set of 50 new trial court judges, beginning July 1, 2009, and one month of funding for the third set of

50 also will be eliminated (Budget Act of 2009, Control section 8.30 (Stats. 2009, ch. 1)). The consequences for the judiciary if these two reductions are implemented will be significant and will undoubtedly imperil the courts' ability to preserve existing levels of service and maintain safe and uninterrupted public access to justice for all Californians.

The Legislative Analyst's Office (LAO) has opined that California will receive more than \$31 billion in revenue from the American Recovery and Reinvestment Act (ARRA) directed to address state budget shortfalls and supplement existing state spending (LAO, "Federal Economic Stimulus Package: Fiscal Effect on California," March 10, 2009, page 6). There also will be billions of dollars more in competitive grants. Although both the Department of Finance (DOF) and LAO have estimated that only \$8 billion of the ARRA will offset General Fund expenditures, we urge you to ensure a thorough examination of all new federal revenue received by California to determine whether the federal funds will offset General Fund expenditures.

Impacts on the judicial branch

The potential cuts threaten the level of court security services that can be provided with existing resources. Fatal incidents continue to occur in our courtrooms. As you are aware, two weeks ago a superior court judge was brutally attacked in her courtroom, resulting in the death of her attacker. The potential \$100 million in trial court reductions will jeopardize the minimum level of security essential to ensure the public's safety in our court facilities.

The budget year reductions would immediately decrease the level of security within California courthouses across the state. The court security program for the 58 superior courts of California is currently suffering from an ongoing \$27 million shortfall. The existing shortfall, however, merely reflects the resources needed to maintain the level of *existing* services, without taking into account the potential \$100 million reduction included in the federal stimulus trigger and the permanent \$146 million reduction otherwise taken in the trial courts' budget. Reductions in the program directly lead to fewer security personnel, increasing the likelihood of a security breach and endangering the lives of judges, court staff, witness, jurors, and litigants.

Other significant impacts also would stem from the potential \$100 million cut to the trial courts. The Budget Act of 2009 failed to provide the Judicial Council with the capacity to address the programmatic deficits that limit California's ability to maintain equal access to justice, including the areas of court-appointed counsel for dependent children and their parents and court interpreters.

The court-appointed counsel program faces a shortfall of \$13 million to meet the current need for the appointment of attorneys. Welfare and Institutions Code section 317 requires the court to appoint counsel to children and parents involved in matters regarding the permanent placement of a child. With inadequate resources, children will be left in foster care and parents will be needlessly separated from their children longer than necessary.

Californians have a constitutional right to have an interpreter present in criminal proceedings if they do not speak English proficiently. According to the United States Census Bureau, 26 percent of

Californians are foreign born, and more than 39 percent of our residents speak a language other than English in their homes. And yet, the interpreter program currently faces a shortfall, which will be exacerbated by \$100 million cut to trial court operations, further limiting the rights of these individuals to access to justice.

Past budget constraints have delayed the implementation of new judgeships and forced many superior courts to reduce administrative services, which in turn has resulted in a reduction in adjudicative services. It is the collaborative effort of clerical and professional staff working alongside judicial officers that allows courts to process and hear cases. The impact of a \$100 million reduction to court operations, when combined with an additional \$146 million permanent reduction (included in the Budget Act of 2009) and the loss of funding for new judicial appointments (\$71 million), would severely limit the courts' capacity to dispense with cases, impeding the ability to ensure that fees and fines are levied correctly, warrants are issued, and dispositions are reported to the Department of Justice and local law enforcement in a timely manner. As a result, there will be an increase the present backlog in unresolved cases.

In light of incomplete and still unfolding information, we urge you to adopt a comprehensive approach and methodology for determining whether the \$10 billion threshold will be met.

Options for Consideration

We recognize that, as of February 25, DOF has estimated that a total of \$8 billion in federal funds will be made available through FY 2009–2010 and that these funds can offset General Fund expenditures. However, we contend that the department's preliminary estimate relies on an overly narrow approach and does not take into consideration all new sources of federal funds.

ABX3 16 does not limit your determination to the American Reinvestment and Recovery Act. Therefore, it is appropriate to consider additional federal funding sources. According to the California Budget Project, the recent reauthorization of the Children's Health Insurance Program will provide California with substantial additional federal funding, which should result in additional General Fund offsets. Likewise, the omnibus appropriations bill also will provide opportunities to identify federal funding that could be used to offset General Fund expenditures in the budget year.

In addition, the DOF estimate fails to count the \$510 million the Governor vetoed from the budgets of the University of California and California State University systems. In the veto message, the Governor indicated that this reduction would be backfilled by the new federal funds. The Legislature also agrees the veto amount should be counted towards the \$10 billion threshold. The California State Assembly noted in its *Final Summary of the 17-Month Budget Package*, released on February 25, 2009, that the Governor's preliminary, conservative estimate of General Fund offset was \$8.4 billion, which includes the \$510 million plus the \$7.9 billion identified to replace cash flow borrowing.

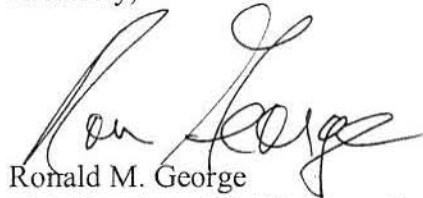
In addition, several credible alternate analyses of available offsetting federal funds being put forth by various public and private organizations deserve your attention and scrutiny. For example, one

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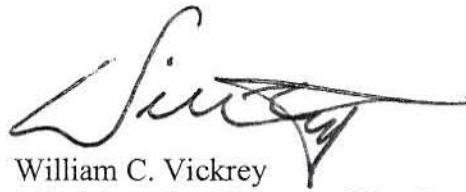
analysis proposes that the state more aggressively capture and use education funds available under the federal stimulus package as State Fiscal Stabilization Funds to offset state spending on K-12 schools and public institutions of higher education (potentially generating an additional \$4.9 billion in offsetting funds). Furthermore, the federal Government Accountability Office estimates that Medicaid funding for California is \$1 billion higher than estimates reported by DOF, and the department has yet to reconcile the lower estimate. Thus funds countable toward the \$10 billion threshold may be underreported by as much as \$1 billion. The combination of these two scenarios would, when combined with the current DOF estimate of \$8 billion in offsetting federal funds, surpass the \$10 billion target.

We understand the complexities that this unique budgeting mechanism poses. Our staff stands ready to provide your offices with all available research, assistance, and supporting documents. Thank you for considering our comments.

Sincerely,



Ronald M. George
Chief Justice of California and
Chair of the Judicial Council



William C. Vickrey
Administrative Director of the Courts

RMG/WCV/CC/HS/lb

cc: Hon. Karen Bass, Speaker of the Assembly
Hon. Darrell Steinberg, President pro Tempore of the Senate
Mr. Ronald G. Overholt, AOC Chief Deputy Director